

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the Santa Ana Watershed Project Authority, for Review of Determinations of the Division of Water Quality, State Water Resources Control Board, Regarding Grant Funding of Proposed Groundwater Extraction Element of the Santa Ana Watershed Comprehensive Water Quality Program and Compliance with Grant Conditions Regarding Use of the Salt Export System (Our File No. G-32).

Order No. WQG 77-4

BY BOARD MEMBER DODSON:

By letters dated October 1 and October 16, 1976, the Santa Ana Watershed Project Authority (petitioner) requested the State Water Resources Control Board (State Board) to review certain decisions of the Division of Water Quality (staff) related to grant funding of the Santa Ana Watershed Comprehensive Water Quality Program. Specifically, these determinations relate to the fundability of groundwater extraction facilities and the adequacy of assurances that capacity in the upper reaches of Santa Ana Regional Interceptor will be utilized.

On October 27, 1976, a hearing was held for the purpose of receiving evidence relative to this matter. The record was held open until November 27, 1976, for the submittal of additional information by the petitioner and said information has been received.

I. BACKGROUND

The petitioner is a joint exercise of powers entity created by the following water districts: the Chino Basin Municipal Water District, the Orange County Water District, the San Bernardino Valley Municipal Water District, and the Western Municipal Water

District. Petitioner's creation stemmed from an attempt to resolve water quantity and quality problems within the Santa Ana River Watershed through a commitment to comprehensive water quality management. This comprehensive effort is affected by a stipulated judgment which presently governs the water quantity and quality relationships between the major water districts in the Santa Ana Watershed. (Case No. 117628, County of Orange, April 17, 1969.) Under this judgment the downstream users of the Santa Ana River are entitled to a certain quantity and quality of water. As stated in the Joint Powers Agreement dated January 6, 1975:

"The purpose of this Agreement is to create a public agency to undertake and implement the common power of undertaking projects for water quality control, and protection and pollution abatement in the Santa Ana River Watershed, including development of waste treatment management plans for the area within the Santa Ana Watershed and construction, operation and maintenance of works and facilities for collection, transmission, treatment, disposal and/or reclamation of sewage, wastes, waste waters, poor-quality groundwaters and storm waters by utilizing funds contributed by the members and grants received from Federal and/or State government and by issuing bonds, notes, warrants and other evidences of indebtedness to finance costs and expenses incidental to said projects."

Petitioner's sponsoring members initiated their efforts in 1967 and the planning phase was completed in 1974. A major portion of the Santa Ana Watershed Comprehensive Water Quality Plan is a salt export system. The salt export system is also a subject of the Santa Ana Basin's Water Quality Control Plan which "...recommends that a salt export system be implemented, involving both agricultural and industrial sources, and, it recommends collection

of accumulated pollution in the groundwaters. The facilities required are a brineline from the Upper Santa Ana Watershed to the Pacific Ocean; a collection system and secondary type treatment plant for dairy sewage; a program of animal solid waste control, separation and resource recovery; a collection system for agricultural wastewaters; and, an extraction, collection and disposal system for poor quality groundwaters in the Arlington, Temescal and Chino III subbasins...". (Regional Board Exhibit 1, Page 5-30.)

The backbone of the salt export system is the Santa Ana Regional Interceptor (SARI). SARI will accept and transport brine wastes from western San Bernardino and western Riverside Counties, through Orange County and to ocean discharge via County Sanitation Districts of Orange County's (CSDOC) ocean outfall. The State Board and EPA have funded or are funding SARI from the County Sanitation District of Orange County Treatment Plant No. 1 through Prado Dam. It is also anticipated that upstream extensions of the brineline will be funded. SARI has basically been completed from CSDOC's Plant No. 1 to Prado Dam. Above Prado Dam it is petitioner's intention that the capacity of SARI be limited to 30 million gallons a day (mgd) capacity. It is this 30 mgd capacity for which the Division is seeking assurances as to use. Specifically, the staff placed the following limitation on further development of SARI:

"Certification will not be made on Reaches IV A, B, or C, or any portion thereof until commitments have been received for at least 50 percent of the flow in that section.
Specifically:

Reach IV A - Based upon the fact that the groundwater-extraction will be in operation upon completion of this reach to the point of discharge. Beyond this point, commitment must be obtained from the dairies for at least 50 percent of the flow to hook up at the time of completion of subsequent extensions.

Reach IV B - Should the committed flow from Sunkist and the groundwater extraction be at least 50 percent of the flow, the construction could proceed to the point of their connection. Beyond this point commitments must be obtained from the individual dischargers for at least 50 percent of the flow to hook up at the time of completion of subsequent extension." (Staff letter to petitioner, dated July 11, 1975.)

It is petitioner's contention that SARI is useful to aid in protection of the beneficial uses and water quality objectives only if certain support elements are also implemented. One of these elements is a proposed groundwater extraction facility consisting of a pair of infiltration galleries and lift stations which will intercept accumulated pollution in the groundwater basins of the upper Santa Ana Watershed just before it rises to the Santa Ana River above Prado Dam. This pollution would then be routed to SARI. The accumulated pollution to be removed by the extraction facilities represents 38 percent of the brineline capacity.

In March, 1975, the proposed extraction facilities project was forwarded by the Santa Ana Regional Water Quality Control Board to the State Board for consideration in adoption of the 1975-76 priority list. However, pursuant to staff advice, the State Board did not place the project on the priority list on the grounds that the facilities were ineligible to receive grant funds. Similarly, the project was also not placed on the 1976-77 priority list. However, at the hearing held in connection with this appeal, staff did not question the eligibility of the extraction facilities project but rather its priority. While the staff concurs that the project is eligible

and that groundwater should be extracted from the upper watershed for discharge to the ocean, its position is that funding should be denied due to the low priority of such a project.

II. CONTENTIONS AND FINDINGS

A. Extraction Facilities

Petitioner specifically requests the State Board to find that the facilities necessary to extract the accumulated saline pollution in the Arlington, Temescal and Chino III subbasins and flow those saline waters to SARI are eligible for grant assistance and that those facilities be classified as a Group I, Priority C project or higher.

1. Eligibility. Previous to this appeal, the staff had considered the groundwater extraction project to be ineligible for grant funding. However, at the hearing the staff expressed a position that the facility was in fact eligible, though not of sufficient priority to warrant funding. We agree that the question is one of priority not eligibility. Section 201(g) of the Federal Water Pollution Control Act authorizes grants for the construction of publicly owned treatment works. Section 212, in part, states:

"(2)(A) The term 'treatment works' means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal wastes or industrial wastes of a liquid nature...

"(B) In addition to the definition contained in subparagraph (A) of this paragraph, 'treatment works' means any other method or system for...treating...or disposing of municipal waste, including storm water runoff, or industrial waste...." (33 U.S.C., Section 1292.)

The groundwaters of the Chino III, Arlington, and Temescal subbasins have received pollution from municipal, industrial and agricultural sources from the time of the Upper Santa Ana

Watershed's development. This accumulated pollution, if not intercepted by the extraction facilities, would continue to rise as flowing water in the Santa Ana River to the detriment of the river below Prado Dam in Orange County. Since the extraction facilities would dispose of both municipal and industrial wastes, they meet the above-mentioned definition and are therefore eligible for funding.

2. Priority. Unfortunately, available grant funds are not sufficient to provide for funding of all necessary and worthwhile projects. To deal with this situation we have developed a system for setting priorities for projects (Title 23, Chapter 3, Subchapter 7, Article 4, California Administrative Code). Only projects of a certain priority fall within a fundable category in any given year.

We recognize that not every project proposed will clearly fit the priority system set forth in the regulations. In this case, staff stated that the uniqueness of these facilities made it difficult to determine the applicability of federal and state laws and regulations. (Staff Position Statement, Page 1.) However, the staff's feeling was that the extraction facilities most closely resembled collection systems which have historically been treated as low priority items for grant funds. The petitioner, on the other hand, feels that the very uniqueness of the facilities is an argument in favor of funding the project. Petitioner contends that the extraction facilities are not similar to any other which has been planned or proposed in the State of California.

The question of the fundability of the extraction facilities appears to be one of first impression. While we are

convinced that the proposed facilities are eligible under state and federal law, they do not fit clearly within the priority scheme set forth in our state regulations. However, these regulations anticipate such a situation and provide that the statewide project list may be adjusted on a case-by-case basis by this Board at its option for good cause. (Title 23, Chapter 3, Subchapter 7, Section 2110.)

Upon careful review of the evidence presented, we find that there is good cause for placing the extraction facilities in a fundable category. Section 201 of the Federal Water Pollution Control Act states that waste treatment management shall provide control or treatment of "in place or accumulated pollution sources." (33 U.S.C., Section 1281(c).) Regional approaches are also encouraged (Title 23, Chapter 3, Subchapter 7, Section 2104, California Administrative Code). In addition the Basin Plan approved by this Board recognizes the need for effectively dealing with the problem of accumulated pollution in the groundwater basins of the Santa Ana Watershed.

The accumulated pollution has been concentrated in three groundwater subbasins as the result of natural topographic-hydrogeologic conditions and the imposition of a man-made flood control dam, Prado Dam. These conditions have served as a collection system whereby extraction of the pollution is feasible within a small area above Prado Dam where the groundwater is in fact resurfacing into the Santa Ana River. Put another way, while the sources of the accumulated pollution are many, there has been a concentration of such sources into a well-defined area above Prado Dam. As stated by petitioner, whereas the valley floor area

contributing to the accumulation is approximately 1,000 square miles, the proposed infiltration galleries and lift stations will occupy less than 8 acres. (Petitioner's Introduction Statement, P-5.) If this accumulated pollution can now be considered a single source as a result of the natural collection mentioned above, as we think it can, then the system proposed can be differentiated from the traditional collection system which has been given low priority. A comparison with the other sources of the brineline wastewaters shows the distinction. In order for the dairy sewage sources to enter SARI, either each individual source would have to tie in or a traditional collection system would have to be developed. In the instant case, however, collection of many different types of sources has already occurred and the extraction facility would deal with a single accumulated pollution problem separate and distinct from other features of the salt export system. Other distinctions are apparent that indicate that these facilities should be given a higher priority than the traditional collection system. One is the magnitude of the effect these poor quality waters have if not extracted. That is, the fact that, if not extracted, the accumulated groundwater rises as flowing waters above Prado Dam and thus pollutes the Santa Ana River to the detriment of downstream users in Orange County. Thus, if not dealt with, the accumulated pollution will continue to degrade waters in areas outside the Upper Santa Ana Watershed.

The fact that such differentiations can be made, when coupled with the mandates of the Basin Plan and the magnitude of the water quality problem presented, lead us to conclude that this is a unique situation appropriate for invoking our power to adjust the priority list to place the extraction facility project presented for review in a fundable category.

3. Assurances of Use. The staff placed conditions on development of the Santa Ana Regional Interceptor above Prado Dam to insure that the brineline would in fact be utilized. Specifically, it was determined that the staff would not certify Step 2 Design Grants on Reaches IV A, B, or C, or any portion thereof until commitments had been received for at least 50 percent of the flow in that section. While such a commitment to use is not required by regulation,^{1/} the staff felt that the situation was analogous to situations involving capacity for outlying areas where capacity is not funded unless it is relatively certain the capacity will be utilized within a reasonable time by the users for which it was intended. (Grants Management Memorandum No. 5.01.) Such a policy is an attempt to balance the concerns of assuring that funded capacity will be used versus sizing a facility for flows smaller than it can be expected to handle.

Petitioner, while agreeing with the principle that there must be an adequate showing that the upper reaches of the brineline will be utilized, submits that the assurances given by it and potential users together with historical factors surrounding the development of the project, meet this concern.

1. 40 CFR Section 35.925, requires industrial users that will contribute greater than 10 percent of the design flow to furnish a letter of intent to pay their fair share of the costs. However, none of the potential users of the upper reaches identified by petitioner would use as much as ten percent of the design flow of the reach into which its discharge would flow.

The central question, of course, is whether the upper reaches of the brineline will be used. It appears that there are potential dischargers of brine who are in existence today for much more than the 30 mgd capacity of SARI. (Hearing Record, Page 135.) In answering the question of use, we are more concerned with assurances that capacity in the brineline is utilized rather than the specific sources making up the capacity. Because of this, we feel that it is appropriate to look to factors other than the letters received from individual point sources and the institutional arrangements proposed regarding nonpoint discharges such as dairy and citrus. Other factors include the stage of development of the project, the uncertain cost data available, the fact that there are brine discharges in existence for well in excess of the proposed brineline capacity, the conditions of the Stipulated Judgment which require a certain quantity and quality of water to flow in the Santa Ana River below Prado Dam, the fact that petitioner's member agencies have endorsed the basin plan, the financial commitments already made by petitioner, and the Regional Board's position regarding elimination of the salt brine problem including enforcement of source control ordinances by municipalities.

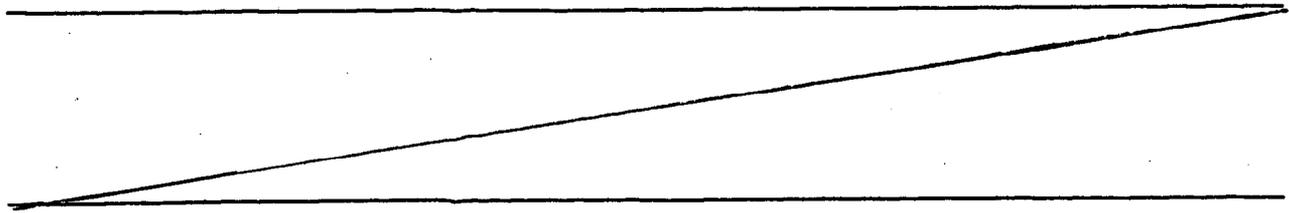
Upon review of these various factors, we conclude that the petitioner should not be denied certification for Step 2 Grants for the upper reaches of SARI because of failure to meet the grant condition. This finding is not meant as a statement that we are completely satisfied with the certainty that the brineline will in fact be fully utilized. Rather it is limited to the present

situation; further and more definite assurances will be required prior to construction. In this connection we would direct staff to continue to work with the petitioner prior to construction toward (1) making improvements in both the number and level of assurances from point sources as cost data and other features of the project become more clear; (2) perfection of the proposed dairy and citrus commitments including establishment of appropriate institutional entities; and (3) resolution of the effect that groundwater extraction would have on the Stipulated Judgment so as to insure that the facilities will in fact be built.

III. CONCLUSION AND ORDER

After review of the entire record, we conclude as follows:

1. Good cause exists for the State Board to exercise its option under Section 2110 of the grant regulations to adjust the fiscal year 1976-77 Priority List to include the proposed extraction facilities in a fundable priority class.
2. There is sufficient indication that the upper reaches of the Santa Ana Regional Interceptor will be utilized by the dischargers identified by petitioner as potential users to justify certification for a Step 2 Grant.



NOW, THEREFORE, IT IS ORDERED that this matter be remanded to the Division of Water Quality for processing of the applications of the petitioner in a manner consistent with this order.

Dated: February 17, 1977

/s/ Roy E. Dodson
Roy E. Dodson, Member

WE CONCUR:

/s/ John E. Bryson
John E. Bryson, Chairman

/s/ W. Don Maughan
W. Don Maughan, Vice Chairman

/s/ W. W. Adams
W. W. Adams, Member

/s/ Jean Auer
Jean Auer, Member